

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

KEVIN P. LAVENDER, In his official	)	
capacity as Commissioner-In-	)	
Possession of Sentinel Trust Company	)	
and Receivership Management, Inc.,	)	
Receiver of Sentinel Trust Company,	)	
	)	No. 4980
Plaintiffs,	)	
	)	
v.	)	
	)	
	)	
	)	
	)	
DANNY N. BATES, et al.,	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION  
FOR SUMMARY JUDGMENT AS TO VARIOUS CLAIMS AGAINST VARIOUS  
DEFENDANTS**

**I. Introduction**

This filing is Plaintiffs' Memorandum of Law in Support of Their Motion for Summary Judgment as to Various Claims Against Various Defendants. For the reasons set forth herein, and in the filings attendant hereto, Plaintiffs assert that as to the claims for which summary judgment is sought, there is no genuine issue as to any material fact and that they are entitled to judgment as to those claims as a matter of law. Rule 56, Tenn. R. Civ. P.

**II. Motion for Summary Judgment Standard**

In the instant Motion, Plaintiffs are requesting entry of summary judgment as to various claims against various Defendants. Rule 56.01 Tenn. R. Civ. P. states that:

a party seeking to recover upon a claim . . . [may] move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

Rule 56.04 Tenn. R. Civ. P. states that:

subject to the moving party's compliance with Rule 56.03,<sup>1</sup> the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Rule 56.06 Tenn. R. Civ. P. states that:

when a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleadings, but his or her response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

While the recent Tennessee Supreme Court cases of Hannan v. Alltel Publishing Co., \_\_\_ S.W.3d \_\_\_, 2008 WL 4790535 (Tenn.) and Martin v. Norfolk Southern, \_\_\_ S.W.3d \_\_\_, 2008 WL 4922434 (Tenn.) are in the more typical context of a defendant moving for summary judgment, those cases nevertheless are instructive as to the standard to apply to the instant Motion.

Plaintiffs must show that all the elements of the claims upon which they move for judgment are established through undisputed facts. If this is not done, then the burden of Defendants to show genuine issues of material fact as to the claim or claims never arises. But if Plaintiffs do establish all the elements of their claim or claims through undisputed facts, then the burden of production shifts to Defendants to produce evidence of specific

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<sup>1</sup> Filed herewith is Plaintiffs' Statement of Undisputed Facts in compliance with Rule 56.03 Tenn. R. Civ. P.

facts establishing that genuine issues or material fact exist as to the claim or claims. See Martin, 2008 WL 4922434 at \*5; Hannan, 2008 WL 4790535 at \*3-7.

### **III. Summary Judgment as to Conversion Claims**

#### **a) Danny Bates**

Danny Bates was found guilty of two counts of theft of Sentinel Trust's trust funds and a criminal judgment has been entered against him as to those crimes. Statement of Undisputed Facts at ¶¶1,2 and 4.<sup>2</sup> The proof in the criminal trial as to the first count of theft showed that Bates stole \$575,000 to pay a civil judgment. The proof in the criminal trial as to the second count of theft showed that Bates stole approximately \$1.6 million which he used to build a house located at 205 Bastin Road in Lewis County, Tennessee. Statement of Undisputed Facts at ¶6. An order of criminal restitution has been entered in the Bates criminal matter ordering that an aggregate of \$600,000 be paid, joint and several as to the two theft convictions. The victim to which criminal restitution is to be paid is Plaintiff Commissioner-in-Possession. Statement of Undisputed Facts at ¶¶4 and 5.

Tennessee courts have uniformly held that:

[A] criminal court conviction by a jury is conclusive on the issue in a subsequent civil trial and thus works on estoppel.

Ali v. Moore, 984 S.W.2d 224, 229 (Tenn. Ct. App. 1998); McFadgon v. City of Memphis, 731 S.W.2d 530, 532 (Tenn. Ct. App. 1986). See also U.S. v. Beaty, 245 F.3d 617, 624 (6<sup>th</sup> Cir. 2001) ("Moreover, in the case of a criminal conviction based upon a jury verdict of guilty, issues which were essential to the verdict must be regarded as

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<sup>2</sup> Reference to "Statement of Undisputed Facts" is reference to Plaintiffs' Statement of Undisputed Facts filed herewith in support of their Motion for Summary Judgment and pursuant to Rule 56.03 Tenn. R. Civ. P.

having been determined by the judgment,” citing Emich Motors Corp. v. General Motors Corp., 340 U.S. 558, 569 (1951)).

The elements of conversion are:

- 1) Defendant’s appropriation of something belonging to plaintiff to defendant’s own use and benefit;
- 2) Defendant gaining possession of that “something” through exercise of dominion over that “something”; and
- 3) Defendant’s acts being in defiance of the plaintiff’s rights.

River Park Hosp. v. Blue Cross/Blue Shield of Tennessee, 173 S.W.3d 43, 60 (Tenn. Ct. App. 2002); Mammoth Cave Prod. Credit Ass’n v. Oldman, 569 S.W.2d. 833, 836 (Tenn. Ct. App. 1977).

The criminal jury that returned the guilty verdict against Danny Bates was charged as follows regarding the crime of theft of property:

Any person who commits the offense of theft of property is guilty of a crime.

For you to find [Bates] guilty of this offense, the state must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that the defendant knowingly obtained or exercised control over property to wit: money valued at over sixty thousand dollars (\$60,000.00), the property of Sentinel Trust, Inc., as indenture trustee for funds belonging to other persons who had funds on deposit in Sentinel’s trust account;

and

(2) that [Bates] did not have the owner’s effective consent;

and

(3) that [Bates] intended to deprive the owner of the property.

Statement of Undisputed Facts at ¶3.

Therefore, the criminal jury verdicts of guilty undisputedly establish that Danny Bates converted the property (i.e., the \$575,000 and the \$1.6 million) that he has been found criminally guilty of stealing. Accordingly, summary judgment as to the claim of conversion should be entered against Danny Bates in this case.

Plaintiffs further assert that judgment should be entered against Danny Bates, as to the conversion claim, for the amount of \$2.175 million (i.e., the aggregate of \$1.6 million and \$575,000). The proof at the criminal trial established that amount was stolen. Statement of Undisputed Facts at ¶6. Danny Bates' defense to the theft charges was that all of the money he was alleged to have stolen was his money. Statement of Undisputed Facts at ¶7.<sup>3</sup> The criminal jury did not believe him and found him guilty of two counts of theft over \$60,000<sup>4</sup> based upon the proof presented of his theft of \$575,000 and \$1.6 million, respectively. Therefore, summary judgment should be entered against Danny Bates for his conversion of \$2.175 million.

As an alternative, and if there is perception of a dispute as to the amount of Mr. Bates' conversion, there can be no dispute that Mr. Bates converted at least \$600,000. After a full hearing regarding criminal restitution -- wherein Danny Bates had the opportunity to show how little he stole and/or how little he could pay, and wherein the State had the opportunity to argue for restitution in the full amounts the proof had shown was stolen -- the criminal court entered an order of restitution for \$600,000. Statement of

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<sup>3</sup>Danny Bates relied on the theft defense of "claim of right" in his criminal trial. Statement of Undisputed Facts at ¶7. While clearly the criminal jury found differently, this position that "it was my money to begin with" is illustrative of the efforts by Bates, who exercised total dominion and control over Sentinel Trust during the time that the acts of theft occurred up to the institution of the Sentinel Trust Receivership, to conceal his criminal activity. Because of the dominion and control Danny Bates exercised over the affairs of Sentinel Trust, it could not bring an action for conversion against Bates until after Bates had been removed from power through the Commissioner-in-Possession's May 18, 2004 takeover of Sentinel Trust.

<sup>4</sup> As this Court is aware, the Tennessee theft statutes set forth various dollar ranges regarding the value of what was stolen. T.C.A. §39-14-105. The highest range is "over \$60,000."

Undisputed Facts at ¶4. That ordered restitution amount, by law, determined the amount that Danny Bates could repay of the amounts that he stole. Therefore, the undisputed minimum amount converted was \$600,000. Strictly in the alternative to the larger \$2.175 million amount, summary judgment, as against Danny Bates for conversion, should be entered for \$600,000.

b) Deanna June Bates

As discussed above, it is undisputed that Danny Bates stole the money that was used to build the 205 Bastin Road house. Prior to April 23, 2004, the 205 Bastin Road house -- which was debt free because it had been built with converted funds -- was owned outright by Danny Bates. Statement of Undisputed Facts at ¶¶9 and 10. On April 23, 2004,<sup>5</sup> Danny Bates “quitclaimed” his 100% interest in that house to his wife, Deanna June Bates. Indeed, Mr. Bates has, under oath, described this transaction as his “giving” his home to his wife. Statement of Undisputed Facts at ¶11. Ms. Bates is still the titled owner of the home. Statement of Undisputed Facts at ¶21.

To be liable for conversion, the defendant need only to have had an intent to exercise dominion and control, and does in fact exercise such dominion and control, over the property that is inconsistent with the Plaintiff’s right. Good faith or lack of knowledge of the plaintiff’s rights by the “converter” is generally immaterial. Commerce Union Bank v. Welch, 29 Bankr 819, 823 (Bankr. M.D. Tenn. 1982); Mammoth Cave, 569 S.W.2d at 836. When property is received or purchased from a thief, even innocently, the innocent recipient/purchaser is liable to the rightful owner for the property

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<sup>5</sup> This April 23, 2004 quitclaim transfer was three weeks before the institution of the Sentinel Trust Company Receivership and was amid a flurry of activity regarding the Tennessee Department of Financial Institutions’ investigation of the financial soundness of Sentinel Trust Company. Statement of Undisputed Facts at ¶¶13 and 14.

stolen or the value thereof. Creach v. Ralph Nichols Co., 267 S.W.2d 132, 134-35 (Tenn. Ct. App. 1953); McDaniel v. Adams, 87 Tenn. 756, 757-58, 11 S.W. 939 (Tenn. 1898).

Under the undisputed facts and case law cited above, Ms. Bates, since April 2004, must be seen as having converted the amounts used to build the 205 Bastin Road house from Sentinel Trust Company. She is exercising dominion and control over the ownership of a house which undisputedly was built with money stolen from Sentinel Trust. She does so contrary to the rights of Sentinel Trust to that stolen money. She may or may not have known about her husband's criminal actions, but assuming she did not know, her lack of knowledge/good faith is not a defense, particularly when the record is undisputed that the transfer of the house was a gift to her and/or that she paid no consideration for the April 23, 2004 quitclaim transfer.

Accordingly, summary judgment should be entered in favor of Plaintiffs against Deanne June Bates for conversion. The amounts shown to have been stolen and used in the construction of the 205 Bastin Road house was \$1.6 million. Statement of Undisputed Facts at ¶6. Therefore, summary judgment should be entered as against Ms. Bates, on this claim, for that amount. As examined earlier in relation to Danny Bates, there can be no dispute that at least \$600,000 had been stolen and used in the building of the 205 Bastin Road house. Thus, strictly in the alternative to the larger \$1.6 million figure, Plaintiffs request entry of summary judgment as against Ms. Bates on this claim in the amount of \$600,000.

c) Remedies Relating to Conversion Claim

In conjunction with the monetary judgments awarded in relation to the conversion claim, or in lieu of award of the monetary portion stolen to build the 205 Bastin Road house, Plaintiffs request that as part of the order granting summary judgment, the Court

order that title to the property quitclaimed to Ms. Bates on April 23, 2004 be placed in the name of the Commissioner-in-Possession. The powers of equity are broad, particularly in fashioning remedies to address wrongs and in addressing divesting and vesting title in property when just and equitable to do so. See T.C.A. §16-1-108; Rule 70 Tenn. R. Civ. P.; Melton v. Anderson, 222 S.W.2d 666, 670 (Tenn. 1948); Preston v. Smith, 293 S.W.2d 51, 61 (Tenn. Ct. App. 1955). It is clear that the monies used to build the 205 Bastin Road house were stolen/converted from Sentinel Trust Company. Therefore, it is reasonable to have what was built with those converted funds tendered to its rightful owner which is the Commissioner-in-Possession on behalf of Sentinel Trust Company.<sup>6</sup>

#### **IV. Summary Judgment as to Unjust Enrichment Claim Against Deanna June Bates**

Continuation of Deanna June Bates as titled owner of the 205 Bastin Road house constitutes unjust enrichment. In order to recover under a theory of unjust enrichment, Plaintiffs must prove a) a benefit has been conferred upon Ms. Bates by Plaintiff, b) Ms. Bates has accepted and benefited from the arrangement, and c) continuation of the benefit under the circumstances would be inequitable. Beaudreau v. Larry Hill Pontiac/Oldsmobile/GMC, Inc., 160 S.W.3d 874, 882 (Tenn. Ct. App. 2004); River Park Hosp., 173 S.W.3d at 57-8.

Undisputedly, Ms. Bates has had a benefit conferred upon her from Sentinel Trust -- she is titled owner of and lives in a debt-free house built with money stolen from Sentinel Trust's trust accounts. Statement of Undisputed Facts at ¶¶10, 11 and 21. Equally clear, is that Ms. Bates has accepted and benefited from the arrangement -- she

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<sup>6</sup> The Commissioner-in-Possession is the named victim to whom the \$600,000 criminal restitution is to be paid. Statement of Undisputed Facts at ¶5. Any recovery from Mr. Bates regarding the conversion claim would also be counted against that \$600,000 restitution obligation.



lives in the house and, unless changed through order of this Court, that house is a debt-free asset of hers. Statement of Undisputed Facts at ¶21. And finally, there can be no dispute that, given the circumstances, continuation of the benefit would be extremely inequitable -- the house was built with funds her husband stole from Sentinel Trust and there are claimants of Sentinel Trust who are not being fully paid because of, at least in part, the theft of those funds from the Sentinel Trust's trust account. Statement of Undisputed Facts at ¶¶1, 6 and 43.

The amount of recovery in an unjust enrichment context is the value of what was provided to the unjustly benefitted defendant. See Ergon, Inc. v. Amoco Oil Co., 966 F. Supp. 577, 586 (W.D. Tenn. 1997). The extent to which Ms. Bates has been, and continues to be, unjustly enriched is the value of the 205 Bastin Road house. Accordingly, the remedy to address the unjust enrichment is the return of what is unjustly enriching Ms. Bates -- i.e., the tendering of the house and its title to the Commissioner-in-Possession, on behalf of Sentinel Trust. Such remedy is within the equitable powers of this Court. See T.C.A. §16-1-108, Rule 70 Tenn. R. Civ. P., Melton, 222 S.W.2d at 670; Preston, 293 S.W.2d at 61.

Thus, Plaintiffs request the Court grant summary judgment in their favor as to the unjust enrichment claim against Ms. Bates and to order that she tender possession and title of the 205 Bastin Road house to the Commissioner-in-Possession.

**V. Summary Judgment as to Breach of Fiduciary Duty Claim as Against  
Danny Bates, Clifton Todd Bates and Gary O'Brien**

Prior to the institution of the Sentinel Trust Receivership on May 18, 2004, Danny Bates exercised dominion and control over Sentinel Trust and its operations. Statement of Undisputed Facts at ¶36. It was only after Danny Bates was removed from power, that

Sentinel Trust Company could, through the Commissioner-in-Possession, pursue claims against him and other officers or directors for breach of fiduciary duty claims.

a) Danny Bates

Danny Bates was the controlling stockholder, president and chairman of the board of Sentinel Trust Company (Statement of Undisputed Facts at ¶36) and, thus, without question owed fiduciary duties to Sentinel Trust. See Efird v. Clinic of Plastic and Reconstructive Surgery, P.A., 147 S.W.3d 208, 221 (Tenn. Ct. App. 2003).

i) Theft from Sentinel Trust Violated Fiduciary Duty

Whether it be under Tennessee statutes relating to corporate officers and directors (T.C.A. §48-18-101 et seq.), or under Tennessee statutes relating to fiduciary/trustee duties (T.C.A. §35-2-101 et seq.), or under the common law of Tennessee, there can be no dispute that stealing trust funds from Sentinel Trust violated the fiduciary duties owed by Danny Bates to Sentinel Trust. It is, of course, undisputed that Danny Bates did so. Statement of Undisputed Facts at ¶¶1, 2, 4 and 6. With regard to Sentinel Trust, those breaches were effectively concealed and/or could not be acted upon during Bates' dominion and control over the company -- i.e., up to the May 18, 2004 take over by the Commissioner-in-Possession. Sentinel Trust has been damaged due to these breaches of fiduciary duty in the amount of the theft (\$2.145 million) or, in the alternative, in the amount of the \$600,000 restitution award relating to Bates' theft.

ii) Other Actions Violated Fiduciary Duty

Additionally, other actions by Danny Bates violated fiduciary duties. It is undisputed that Danny Bates, while he controlled Sentinel Trust, admitted to directing Sentinel Trust's practice of borrowing monies on deposit in the pooled fiduciary account from non-related bond issues to fund expenses of defaulted bond issues, and that that

practice created a significant deficiency in cash in the pooled fiduciary account. Statement of Undisputed Facts at ¶¶38 and 39. Danny Bates has further admitted that he used the cash held in the trust department at Sentinel Trust in a manner contrary to the indenture that governed Sentinel Trust actions as trustee. Id. Moreover, Danny Bates admitted that while he was in control of Sentinel Trust, he engaged in practices that not only violated the Tennessee Banking Act, but also violated i) the FDIC's Statement of Principle of Trust Department Management, which Sentinel Trust had adopted, and ii) the indentures and contractual agreements between the bond issues and Sentinel Trust. Id. Finally, it is undisputed that Danny Bates never disclosed to any bond issuer or borrower that monies sent to Sentinel Trust, for deposit and use regarding a particular bond issue, were being used for other purposes contrary to the indenture. Statement of Undisputed Facts at ¶40. Had such been disclosed, and Danny Bates was under a duty as a fiduciary to do so,<sup>7</sup> many of the bond issuers/borrowers would have removed Sentinel Trust as fiduciary to the bond issue(s). Statement of Undisputed Facts at ¶41.

Regarding these additional areas of breach of fiduciary duties -- the ones separate and apart from the criminal acts of Danny Bates -- Sentinel Trust has been injured to the extent that a deficiency exists in the pooled fiduciary account that was maintained at Sentinel Trust. The fiduciary breaches relating to improper use of cash held in Sentinel Trust caused that shortfall (In re: Sentinel Trust, 206 S.W.3d at 524-25) and the deficiency is Sentinel Trust's to address. Statement of Undisputed Facts at ¶16.<sup>8</sup> Proof

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<sup>7</sup> See Wyner v. Athens Utilities Board, 821 S.W.2d 597, 599 (Tenn. Ct. App. 1991); Macon County Livestock Market v. Kentucky State Bank, 724 S.W.2d 343, 349 (Tenn. Ct. App. 1986).

<sup>8</sup> Plaintiffs also note that Bates has admitted that the owners of Sentinel Trust were also to pay for the deficiency (Statement of Undisputed Facts at ¶16) and, of course, he was the controlling owner of that company Id. at ¶36.

of the amount of injury/damages need not be to a level of absolute certainty. Rather the goal of establishing an amount of damages is to restore the injured party, as nearly as possible, to the position the party would have been in had the breach of fiduciary duty not occurred. See Waggoner Motors, Inc. v. Waverly Church of Christ, 159 S.W.3d 42, 57 (Tenn. Ct. App. 2004). To that end, the amount of damages to be awarded regarding the fiduciary breaches relating to the deficiency in pooled fiduciary account is the amount of that deficiency, which is \$4.395 million.<sup>9</sup> Statement of Undisputed Facts at ¶42.

Accordingly, Plaintiffs request entry of summary judgment as against Danny Bates for breach of fiduciary duties owed to Sentinel with damages awarded in the amount of \$2.175 million (or in the alternative \$600,000) for the breaches arising from his criminal activity and \$4.395 million for the breaches causing the significant deficiency in Sentinel Trust's pooled fiduciary account.

b) Clifton Todd Bates and Gary O'Brien

In December 1999, Clifton Todd Bates and Gary O'Brien became directors of Sentinel Trust Company and served in that capacity until the Commissioner-in-Possession took over Sentinel Trust on May 18, 2004. Statement of Undisputed Facts at ¶37. In the In re: Sentinel Trust opinion, it has been found – and, thus, it is undisputed -- that Clifton Todd Bates and Gary O'Brien:

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<sup>9</sup> Plaintiffs recognize that setting of a damage amount in a breach of fiduciary duty claim usually is a matter for the trier-of-fact. In this case, however, Sentinel Trust has been damaged in the amount of the deficiency in the pooled fiduciary account and the calculation set forth in support of the \$4.395 million amount is based on matters presented to the Sentinel Trust Receivership Court and final orders of the Court. Statement of Undisputed Facts at ¶42. Accordingly, Plaintiffs assert that it is undisputed that \$4.395 million is a reasonably certain amount regarding the deficiency in the pooled fiduciary account. However, if the Court perceives the amount of damages resulting from the pooled fiduciary account deficiency to be in dispute, Plaintiff request that summary judgment be granted as to the liability for that deficiency under the breach of fiduciary duty claims. Rule 56.04 Tenn. R. Civ. P.

admit that Sentinel's practice of borrowing monies on deposit in the pooled fiduciary account from non-related bond issues to fund the expenses of defaulted bond issues resulted in a significant deficiency in cash in the pooled fiduciary account.

...

[and] by their own admission, prior to the Commissioner's taking possession of Sentinel, [Clifton Todd Bates and Gary O'Brien] were engaging in practices that not only violated the Tennessee Banking Act, but also violated the FDIC's Statement of Principles of Trust Department Management, which Sentinel adopted as part of its corporate policies. Furthermore, these practices violated the indentures and contractual agreements between the bond issuer and Sentinel as fiduciary.

206 S.W.3d 524-25 [brackets added for clarity]. Statement of Undisputed Facts at ¶¶38 and 39. Accordingly, and for the same reasons as stated above in relation to Danny Bates, the actions found as against Clifton Todd Bates and Gary O'Brien violated fiduciary duties owed by them as directors to Sentinel Trust. The injury caused to Sentinel Trust by those actions was the "significant deficiency in cash in the pooled fiduciary account" that resulted. In re: Sentinel Trust, 206 S.W.3d at 525. That amount is \$4.395 million. Statement of Undisputed Facts at ¶42.

Therefore, Plaintiffs' request summary judgment be granted as against Clifton Todd Bates and Gary O'Brien for breach of the fiduciary duties they each owed to Sentinel Trust as directors, the amount of judgment requested being \$4.395 million.

## **VI. Summary Judgment as to Fraudulent Transfer of Property Claims**

### **a) Overview and Common Undisputed Facts**

Pursuant to T.C.A. §66-3-305, a transfer of property is fraudulent as to a future creditor, if at the time of the transfer, the debtor made the transfer

(1) with the actual intent to hinder, delay or defraud any creditor, or (2) without receiving reasonably equivalent value from the transaction and the debtor was about to incur or should have reasonably believed he would incur debts beyond his ability to pay.

T.C.A. §66-3-305(a). The transactions which are asserted to be fraudulent are property transfers which occurred on April 23, 2004, July 9, 2004 and October 12, 2004. Statement of Undisputed Facts at ¶¶11, 22, 23 and 29. Each transfer involved Danny Bates, or his solely owned and controlled shell company, Sentinel Services Corporation,<sup>10</sup> quitclaiming real property to family members or a revocable family trust which Danny Bates controlled.<sup>11</sup> Statement of Undisputed Facts at ¶¶11, 22, 23 and 29. Each transfer was for the nominal amount of \$10.00 and, thus, not for “reasonably equivalent value.” Statement of Undisputed Facts at ¶¶11, 22, 23 and 29. Indeed, as to the April 23, 2004 transfer and the October 12, 2004 transfers, Danny Bates admits that the transfers were gifts/without consideration. Statement of Undisputed Facts at ¶20 (as to April 23, 2004 transfer) and ¶30 (as to October 12, 2004 transfers). In each instance, the quitclaim transfer was amidst numerous events known to Danny Bates that a) increasingly clarified and made certain the financial unsoundness and insolvency of Sentinel Trust Company, and b) established that Sentinel Trust’s trust account had deficiencies ranging from \$5.7 million to \$7.25 million. Statement of Undisputed Facts at ¶¶14, 15, 24, 27, 32 and 34. There is no doubt that Danny Bates knew, or should have known, that as the controlling

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<sup>10</sup> Sentinel Services Corporation is, and has been, an inactive corporation wholly owned and controlled by Danny Bates which never realized income or paid taxes and which was utilized simply to hold property belonging to Danny Bates in “corporate” name. Sentinel Services Corporation was merely Danny Bates in nominal “corporate” form. Statement of Undisputed Facts at ¶28.

<sup>11</sup> The “Bates Family Trust” was established by Danny Bates as a revocable trust controlled by him. Danny Bates admits that at the time of the suspect property transfers to Bates Family Trust, he had the unfettered ability to move assets into and out of that “trust” and otherwise completely controlled the activities of the “trust.” Statement of Undisputed Facts at ¶31.

owner and president of Sentinel Trust Company, he and his personal assets would be pursued in relation to the insolvency of Sentinel Trust. Bates has admitted that the assets of Sentinel Trust (corporate) as well as the assets of its owner (i.e., him) would be available to address the pooled fiduciary account deficiency. Statement of Undisputed Facts at ¶16. And at the time of each transfer, it was clear that those assets (both Sentinel Trust Corporate assets and Bates' personal assets) would not be sufficient to address the admitted deficiencies in the pooled fiduciary account. Statement of Undisputed Facts at ¶¶12, 15-18, 24-26 and 32-33. Furthermore, it must be remembered that at the time of the transfers (i.e., throughout 2004), Danny Bates was aware of the matters for which he was later convicted of criminal theft -- i.e., the stealing of \$2.175 million from Sentinel Trust. Therefore, Danny Bates was aware, at the time of these transfers, that the disputes relating to Sentinel Trust and the deficiency in the pooled fiduciary account, plus his own criminal activity, would cause him to incur or be answerable to debts beyond his ability to pay.

Finally, it is clear that the Commissioner-in-Possession is a current creditor of Danny Bates (and was at the time of the fraudulent transfers, a future creditor). The Commissioner-in-Possession, on behalf of Sentinel Trust, is the victim of Bates' criminal theft and is owed a criminal judgment of \$600,000. Statement of Undisputed Facts at ¶5. Additionally, as it relates to the insolvency of Sentinel Trust (upheld in In re: Sentinel Trust) and as it relates to the pooled fiduciary account deficiency, the Commissioner-in-Possession is also a creditor of Mr. Bates.

b) April 24, 2004 Quitclaim Transfer is Fraudulent

Prior to April 24, 2004, Danny Bates owned 100% of the property and house located at 205 Bastin Road (Statement of Undisputed Facts at ¶10) -- the house, of

course, being the one built with funds stolen from Sentinel Trust and having no debt associated with it. On April 23, 2004, Danny Bates quitclaimed/transferred his 100% ownership of that house and property to his wife for a recital sum of \$10.00. Statement of Undisputed Facts at ¶11. At that time, Mr. Bates was involved in and knowledgeable of an ever-increasing flurry of activity relating to the financial soundness of Sentinel Trust and Mr. Bates knew on or before April 24, 2004 that there was a \$5.7 million shortfall in Sentinel Trust's fiduciary account. Statement of Undisputed Facts at ¶14. Mr. Bates knew that Sentinel Trust would be responsible for any shortfall in its fiduciary accounts and that both Sentinel Trust's and his own personal assets would be in jeopardy in relation to any shortfall at Sentinel Trust. Statement of Undisputed Facts at ¶16. Moreover, and particularly so with the 205 Bastin Road house, Mr. Bates knew, at the time of the April 24, 2004 quitclaim transfer, that he could be held responsible for the criminal activity he engaged in relating to the funding of the construction of that house. These obligations, be they in relation to the fiduciary account shortfall or the consequences of his criminal activity, would be in excess of what Mr. Bates could otherwise pay. Statement of Undisputed Facts of ¶¶12 and 15-18.

Accordingly, no factual dispute exists and, as a matter of law pursuant to T.C.A. §66-3-305(a)(2), summary judgment should be granted in favor of Plaintiffs as to the April 24, 2004 quitclaim transfer being fraudulent. Plaintiffs further request entry of an order that affords all remedies set forth in T.C.A. §66-3-308, specifically including the setting aside of the transfer, subjecting the fraudulently conveyed property to satisfaction of the Commissioner-in-Possession's claim and/or vesting title of that property in the



name of the Commissioner-in-Possession and enjoining any further transfer or encumbrance of that property while the above-mentioned matters are accomplished.

c) July 9, 2004 Quitclaim Transfers Are Fraudulent

Prior to July 9, 2004, Danny Bates owed 100% of three parcels of property in Lewis County, Tennessee, which on that date, he quitclaimed to his wife (2 parcels) and to his son and daughter-in-law (1 parcel). Statement of Undisputed Facts at ¶¶22-23. July 9, 2004 is, of course, three months after Sentinel Trust had been taken over. Each quitclaim transfer was supported only by the recital consideration of \$10.00 and were made at a time when Danny Bates knew that Sentinel Trust had a \$7.25 million shortfall in its fiduciary account. Statement of Undisputed Facts at ¶¶22-24. Of course, at the time of the July 2004 transfers, Danny Bates also would have known about his actions of stealing \$2.175 million from Sentinel Trust. Moreover, by July 9, 2004, Sentinel Trust had been declared insolvent and been placed in liquidation. Statement of Undisputed Facts at ¶25. Therefore, at that time, Danny Bates knew that the assets of Sentinel Trust did not exist to address the deficiency in the pooled fiduciary account, and he also knew that his own personal assets (which were heavily weighed towards his ownership of Sentinel Trust stock) were not sufficient to meet the obligations of the trust fund deficiency or the consequences of his criminal conduct. Statement of Undisputed Facts at ¶¶25-26.

Accordingly, and as is the case with the April 24, 2004 transfer, the July 9, 2004 transfers were such that Danny Bates did not receive a reasonable equivalent in value in exchange and were made at a time when Danny Bates was facing the imposition of obligations upon him in amounts which he knew, or should have known, he could not pay. As such, no factual dispute exists and, as a matter of law pursuant to T.C.A. §66-3-

305(a)(2), summary judgment should be granted in favor of Plaintiffs as to the July 9, 2004 transactions being fraudulent. Plaintiffs further request entry of an order that affords all remedies set forth in T.C.A. §66-3-308, specifically including the setting aside of the transfers, subjecting the fraudulently conveyed property to satisfaction of the Commissioner-in-Possession's claim and/or vesting title of that property in the name of the Commissioner-in-Possession and enjoining any further transfer or encumbrance of those parcels of property while the above-maintained matters are accomplished.

d) October 12, 2004 Quitclaim Transfers Are Fraudulent

The two parcels of property transferred on October 12, 2004 are exactly the same as those transfers on April 24, 2004 and July 9, 2004 -- i.e., transfers were not exchanges of value, transfers were made by Danny Bates with knowledge of his own criminal activity and knowledge of the multi-million dollar Sentinel Trust fiduciary account shortfall, transfers were made amid events that indicated Sentinel Trust's insolvency and Danny Bates' own exposure to obligations and debt, etc. Statement of Undisputed Facts at ¶¶29-30 and 32-34. The only difference in relation to the October 12, 2004 transfers are that the transfers were from a shell corporation owned and controlled by Danny Bates, Sentinel Services Corporation, instead of from Danny Bates himself. Statement of Undisputed Facts at ¶¶28-30.

In reality, this difference is not material because it is undisputed that Sentinel Services Corporation was merely "Danny Bates in corporate form," had been established as an inactive shell corporation as a place to "park" property otherwise owned by Danny Bates and was totally owned and controlled by Danny Bates. Statement of Undisputed Facts at ¶28. Indeed, Bates admits that the property that was transferred on October 12, 2004 was his property. Statement of Undisputed Facts at ¶30.

Accordingly, and as was the case with the April 24, 2004 and July 9, 2004 transfers, the October 14, 2004 transfers were such that Danny Bates (in the guise of his inactive shell corporation, Sentinel Services Corporation) did not receive a reasonable equivalent in value in exchange and were made at a time when Danny Bates was facing the imposition of obligations upon him for which he could not pay. As such no factual dispute exists, and as a matter of law pursuant to T.C.A. §66-3-305(a)(2), summary judgment should be granted in favor of Plaintiffs as to the October 14, 2004 transfers being fraudulent. Plaintiffs further request entry of an order that affords all remedies set forth in T.C.A. §66-3-308, specifically including the setting aside of the transfers, subjecting the fraudulently conveyed property to satisfaction of the Commissioner-in-Possession's claim and/or vesting title of that property in the name of the Commissioner-in-Possession and enjoining any further transfer or encumbrance of that property while the above-mentioned matters are accomplished.

#### **VII. Request for Findings Under Rule 56.05 Tenn. R. Civ. P.**

The Complaint in this action alleges more claims, against various of the Defendants, than are presented in this instant Motion of Summary Judgment. Therefore, Plaintiffs request that the hearing of the Motion<sup>12</sup> be conducted, and that the order deciding the instant Motion be entered, consistent with the provisions of Rule 56.05 Tenn. R. Civ. P.

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<sup>12</sup> By Order signed on October 7, 2009 and entered on October 8, 2009, the instant Motion for Summary Judgment is set for hearing on March 12, 2010 at 9:30 a.m. at the Hickman County Courthouse.

### **VIII. Request for Entry of Order Granting Instant Motion as Final**

If the instant Motion for Summary Judgment is denied in all respects, the parties will prepare for trial, hopefully with the guidance from the Court requested immediately above pursuant to Rule 56.05 Tenn. R. Civ. P.

If, however, the instant Motion for Summary Judgment is granted, Plaintiffs request that the Court instruct that said order be entered as a final judgment as to the claims adjudicated in that order. Rule 54.02 Tenn. R. Civ. P. The granting of this instant Motion for Summary Judgment will not adjudicate all of the claims stated in Plaintiffs' Complaint. But the granting of the instant Motion for Summary Judgment would provide incentive to the Plaintiffs to execute on that portion upon which they have a judgment and dismiss the remaining claims in the Complaint. Such would make more efficient and quicker the closure of this matter and the parallel closure of the Sentinel Trust Receivership Estate. But such would be an option only if an order granting summary judgment were made final and either not appealed or upheld on appeal.

Accordingly, the Plaintiffs' request that if the instant Motion for Summary Judgment is granted, that the Court include in that order a) an express determination that there is no just reason for delay, and b) an express direction to the Clerk and Master that such order be entered as a final order as to the matters upon which summary judgment were granted. Rule 54.02 Tenn. R. Civ. P.

### **IX. Conclusion**

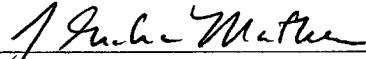
For the reasons set forth herein and as set forth in the attendant filings, Plaintiffs' request entry of an order providing the following:

- a) granting judgment in favor of Plaintiffs as to the conversion claim against Danny Bates with award of \$2.175 million against him and vesting title to the

205 Bastin Road property in the name of the Commissioner-in-Possession;

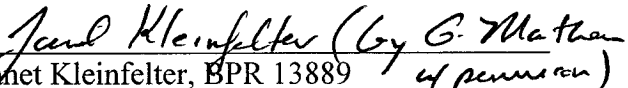
- b) granting judgment in favor of Plaintiffs as to the conversion claim against Deanna June Bates with award of \$1.6 million against her and vesting title to the 205 Bastin Road property in the name of the Commissioner-in-Possession;
- c) granting judgment in favor of Plaintiffs as to the unjust enrichment claim against Deanna June Bates and vesting title to the 205 Bastin Road property in the name of the Commissioner-in-Possession;
- d) granting of judgment in favor of Plaintiffs as to the breach of fiduciary duties claim against Danny Bates with an award against him of \$2.175 million resulting from his criminal actions and \$4.395 million resulting from the deficiency in the Sentinel Trust pooled fiduciary account;
- e) granting of judgment in favor of Plaintiffs as to the breach of fiduciary duties claim against Clifton Todd Bates and Gary O'Brien with a joint and several award against them of \$4.395 million resulting from the deficiency in the Sentinel Trust pooled fiduciary account;
- f) granting judgment in favor of Plaintiffs as to the claims of fraudulent conveyance of property against Danny Bates and Sentinel Services Corporation as to the properties identified herein and the vesting of title of those properties in the name of the Commissioner-in-Possession as well as other appropriate remedies pursuant to T.C.A. §66-3-308;
- g) entry of the order granting Plaintiffs' Motion for Summary Judgment as a final order as to the matters so granted (Rule 54.02 Tenn. R. Civ. P.); and
- h) all other relief as deemed necessary by the Court.

Respectfully submitted,



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Sentinel Trust Company

### CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail, and by Federal Express as noted, on this the 23<sup>rd</sup> day of December, 2009.

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(Via Federal Express)

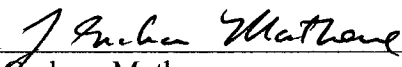
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